



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ALBERT E. AND S. JEAN HORNSEY )

For Appellants: Albert E. Hornsey, in pro. per.

For Respondent: Crawford H. Thomas  
Chief Counsel

John D. Schell  
Counsel

O P I N I O N

This appeal is made pursuant to section- 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Albert E. and S. Jean Hornsey against a proposed assessment of additional personal income tax in the amount of \$195.52 for the year 1967.

Prior to January 16, 1967, appellants resided in New Jersey where Mr. Hornsey was employed by Curtiss-Wright Corp. On January 16, 1967, Mr. Hornsey came to California to accept employment at the Lockheed Missiles and Space Co. facilities in Sunnyvale. Since Mrs. Hornsey was expecting a child, the rest of the family remained in New Jersey until after the baby was born. The family and household goods were moved to California in May 1967.

The total cost of the transcontinental move exceeded \$3,800.00. Lockheed reimbursed appellants for these expenses to the extent of \$3,337.32, and appellants included this amount in the gross income they reported on their 1967 California return. Appellants claimed a moving expense deduction in the amount of \$3,545.70, but respondent disallowed the entire deduction on the grounds that appellants' old and new residences were not

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both located in California, as required by Revenue and Taxation Code section 17266, subdivision (c)(1)(C). Respondent thereupon issued a proposed assessment of additional taxes, and appellants' appeal from the denial of their protest against that assessment.

Appellants' only contention is that subdivision (c)(1)(C) of section 17266 unconstitutionally discriminates against interstate travelers by allowing a moving expense deduction only in cases where both the old residence and the new residence are located in California. Since this appeal involves a deficiency assessment and the only issue in the appeal brings into question the constitutionality of a state statute, we shall refrain, under the well established policy of this board, from ruling on the constitutional question. (Appeal of F. T. and Fumiko Mitsuuchi, Cal. St. Bd. of Equal., Jan. 5, 1949; Appeal of James S. and Marian Forkner, et al., Cal. St. Bd. of Equal., Aug. 7, 1963.) This policy is based upon the absence of any specific statutory authority which would allow the Franchise Tax Board to obtain judicial review in a case of this type, and we believe that such review should be available for questions of constitutional importance. (Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

In sustaining respondent's action on this basis, we expressly reserve for later appeals all questions related to the proper interpretation of section 17266.

O R D E R.

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Albert E. and S. Jean Hornsey against a proposed assessment of additional personal income tax in the amount of \$195.52 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day  
of June , 1971, by the State Board of Equalization.

Paul M. Hegin, Chairman  
John W. Lynch, Member  
Robert H. Hester, Member  
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\_\_\_\_\_, Member.

ATTEST:

[Signature], Secretary